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Know Your Rights When You Enter a Skilled Nursing Facility for Short-Term Rehabilitation

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Disclaimer

Please note: *The following content is for informational purposes only. It is not to be interpreted as legal advice and the information contained is not necessarily applicable to your specific case.*

Overview

- ❖ Hospital Discharge Process
- ❖ Resident Admissions Agreement
- ❖ Resident Right: Care Planning and Discharge Planning
- ❖ Visitation/ Outings/ Communal Dining
- ❖ Staffing Requirements
- ❖ Where to turn if there is a complaint?
- ❖ Resources

Hospital Discharge Process

- You have a right to participate in your plan of discharge
 - ❖ Social workers or discharge planners are usually in charge of creating your discharge plan
 - ❖ While discharge planners are experts on your settings, you are an expert about yourself, you know your physical and financial limitations and the extent to which your loved ones can provide care
- Know your options for discharge:
 - ❖ Is the nursing home the only option? What are the risks to returning home?
- If you feel you are having trouble being involved in your own care and planning, ask to speak with the hospital's patient advocate
- Ask Questions!
 - ❖ This will ensure a better health outcome for you and help you become more involved in your care
- CELJ Hospital Discharge Planning Guide for when you need SNF level of Care <https://elderjusticenyc.org/wp-content/uploads/2020/09/1a-SNF-Magazine.pdf>

Resident Admissions Agreement

Read this document thoroughly!

Admissions agreements **cannot**:

- Require the resident waive his/her rights included under the federal regulations and other protections under state or local nursing home law
- Require or request the resident waive his/her rights to Medicare or Medicaid
- Require as a condition of admission (or continued residency) the resident enter into a binding arbitration agreement.
- Waive (or request the resident waive) its liability for loss of resident personal property
- Include financial guarantees
- Require residents deposit personal funds with the nursing home.
- CELJ Nursing Home Admissions Agreement Guide
<https://elderjusticenyc.org/wp-content/uploads/2019/07/Nursing-Home-Admission-Agreements.pdf>

What to Expect in the Nursing Home: First 48 Hours

The nursing home is required to develop a Baseline Care Plan within your first 48 hours at the facility. (Unless they develop the Comprehensive Care Plan*)

- ❖ Staff are required to provide you with a written summary of this plan that will include:
 - Your initial goals of care, physician's orders, dietary orders, therapy services, and social services.
 - Remember: you decide your goals and objectives. Speak up!
- ❖ If you do not receive the written summary by 48 hours of entering the nursing home, ask for the baseline care plan summary!

<https://elderjusticenyc.org/wp-content/uploads/2019/02/Baseline-Care-Plan-To-Be-Uploaded.pdf>

Resident Right: Care Planning

- Comprehensive Care Plan:
 - ❖ Must be developed within 21 days of your admission
 - ❖ Services to be provided to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being;
 - ❖ Resident's goals and desired outcomes;
 - ❖ Discharge Planning;
 - ❖ Reviewed quarterly (plus meetings); is a fluid document.
 - Care Plan Meeting: your family and others of your choice have a right to participate
 - Be an active participant in your care planning!

Resident Right: Discharge Planning

- ❖ Discharge Planning: is part of the care plan and the facility must:
 - Focus on the resident's discharge goals;
 - Prepare residents to be active partners in the process;
 - Post-discharge care;
 - Reduce factors that lead to preventable readmissions.
- ❖ You have a right to return to the community or any other living arrangement in the community
- ❖ Involuntary discharges/transfers typically happen because care plans are not followed and/or the resident is not properly involved!

6 Allowable Reasons for Discharge

1. Necessary for the resident's welfare and the residents needs cannot be met at the facility;
2. Appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
3. Safety of individuals is endangered due to the clinical or behavioral status of the resident;
4. Health of individuals in the facility would otherwise be endangered;
5. Resident has failed, after reasonable and appropriate notice, to pay for (or to have paid) under Medicare or Medicaid at the facility; or
6. The facility ceases to operate.

Every one of these reasons can be involuntary and are appealable!

What to do if you are threatened with discharge and/or receive a notice of discharge from the nursing home?

- ❖ If the nursing home has decided to ask you to leave, they are required to provide you with a discharge notice, that will explain the reason for discharge, the date of discharge, and discharge location.
- ❖ If you think the nursing home is asking you to leave for an improper reason, you have the right to appeal the discharge, and you have the right to remain in the nursing home pending the outcome of the appeal.
 - ❖ An appeal is filed by calling the NYS DOH: 1-888-201-4563
- ❖ Call the NYS Long Term Care Ombudsman Program to learn more about your rights.
- ❖ Call CELJ for potential legal representation
- ❖ CELJ Nursing Home Transfer/Discharge Guide
<https://elderjusticenyc.org/resources/long-term-care-resources/>

Medicare Coverage in an Nursing Home

Medicare Part A may cover up to 100 days of your nursing home stay if:

- You had a 3 day or more inpatient hospital stay before nursing home admission;
- Your Physician orders skilled nursing or therapy services;
- Skilled services (*including physical therapy*) are required on a daily basis and can only be provided in the nursing home

Medicare- Jimmo

- Medicare won't cover your SNF stay because you are not improving. THIS IS FALSE
- What does Jimmo mean?
 - ❖ Skilled services should not be stopped solely based on lack of improvement
 - ❖ Medicare coverage depends on the need for skilled care, not the presence or absence of potential for improvement

Proper standard as clarified by Jimmo:

- ❖ Is a skilled professional needed to ensure nursing or therapy is safe and effective?
- ❖ Is a qualified nurse or therapist needed to provide or supervise the care?
- ❖ If yes to both then Medicare should cover the services regardless whether the skilled care is to improve or maintain current levels, or slow deterioration.

Visitation

- Visitation can be conducted through different means based on a facility's structure and residents' needs, such as in resident rooms, dedicated visitation spaces and outdoors
- Facilities can schedule visits but should consider scheduling visits for a specified length of time to help ensure that all residents are able to receive visitors and the facility is able to maintain the core principles of infection prevention
- Compassionate care visits should be allowed at all times, regardless of a resident's vaccination status, the county's COVID-19 positivity rate, or an outbreak in the facility.
- Visitors should not be required to be tested or vaccinated (or show proof of such) as a condition of visitation

Visitation cont.

- Visitation can occur during an outbreak indoors, with the appropriate safeguards, as long as there is evidence that the transmission of COVID-19 is contained to a single area or unit of the facility
- If the resident is fully vaccinated, they can choose to have close contact (including touch) with an unvaccinated visitor while both are wearing a well-fitting face mask and performing hand-hygiene before and after.
- If both the resident and their visitor(s) are fully vaccinated, and the resident and visitor(s) are alone in the resident's room or designated visitation room, the resident and visitor may choose to have close contact (including touch) without a mask or face covering

Communal Dining and Activities

- Communal dining may occur without the use of face coverings or physical distancing, if all residents are fully vaccinated.
- If there are unvaccinated residents also dining in the communal dining area, all residents must wear face coverings when not eating and unvaccinated residents should physically distance from others.
- Group activities may occur without the use of face coverings or social distancing if all residents participating are fully vaccinated.
- If any residents that are not fully vaccinated are participating, all residents must wear a face covering and unvaccinated residents should physically distance from others

Outings

- An outing refers to short leaves of less than 24 hours such as medical appointments, visits with family/friends, including lunch with family and other activities, and longer periods of time
- Residents are allowed to leave the facility for outings
- Each facility is required to have appropriate policies and procedures in place to address infection control and prevention after outings

Guidelines and Fact Sheet on Visitation and Outings

- Current guidelines:
https://coronavirus.health.ny.gov/system/files/documents/2021/07/nh_visitation_guidance_-7-8-2021.pdf
- CELJ Fact Sheet: <https://elderjusticenyny.org/wp-content/uploads/2021/07/Fact-Sheet-Nursing-Home-Visitation.pdf>

Staffing Requirements

- No mandated staffing ratios in federal regulation:
 - 24 hour nursing care by licensed nurses and other personnel;
 - RN on staff at least 8 consecutive hours/7 days a week.
- **New eff. Jan 1, 2022*: Chapter 156 of the Laws of 2021
 - Maintain daily average staffing equal to 3.5 hprd (RN,CNA,LPN)
 - 2.2 hprd CNA
 - 1.1 RN and/or LPN care
- Know the nursing homes staffing information:
 - Required to be posted daily
 - CMS Payroll Based Journal (PBJ) Data: <https://data.cms.gov>
 - LTCCC: user-friendly PBJ data
 - <https://nursinghome411.org/nursing-home-data-information/staffing/>

Resident and Family Councils

- Residents and their families have the right to join together in resident councils or family councils
- These councils can be used to discuss various concerns (i.e. procedures regarding outings, visitation and staffing requirements) and offer suggestions regarding the concerns to the facility
- Facilities are required to consider and act promptly on grievances and recommendations of resident and family councils
- These councils can be a valuable tool to make positive changes in a facility

Where to turn if there is a complaint?

NYS Department of Health

- Investigates complaints and incidents for nursing homes and adult care facilities that are related to Federal and/or State regulatory violations
- Has the ability to issue citations and fines for violations
 - Can file a complaint two ways
 - For nursing homes:
 - <https://www.health.ny.gov/facilities/nursing/complaints.htm>
 - Call 1-888-201-4563
- Residents can also call DOH to appeal an involuntary nursing home discharge
 - Call 1-888-201-4563

Where to turn if there is a complaint?

Long-Term Care Ombudsman Program

- Federally mandated program in every state
- Ombudsman are resident advocates and assist residents in nursing homes
- They help to investigate and resolve quality of care complaints on behalf of residents
- They can participate in care plan meetings and speak on the residents behalf if the facility is not helping with discharge planning
- Region 15 LTCOP: 716-817-9222 (Chautauqua, Cattaraugus, Erie, Niagara)
- State LTCOP: 1-855-582-6769;
<https://ltcombudsman.ny.gov/>

Where to turn if there is a complaint?

NYS Attorney General Medicaid Fraud Control Unit

- Investigates and prosecutes abuse and neglect of residents in nursing homes
- To report resident abuse or neglect with the MFCU:
 - Complete the MFCU Comment Form:
<https://ag.ny.gov/comments-mfcu>
 - Call: 1-800-771-7755
 - Buffalo Office: 716-853-8500

Center for Elder Law & Justice

Free Legal Advice Helpline: Answers to Brief Legal Questions

❖ Monday through Friday from 9:00am to 11:00am EST at 1-844-481-0973. You can also call and leave a message outside of those hours, and e-mail us at any time at helpline@elderjusticenyc.org. A licensed attorney will respond to you within 2-3 business days

Main Intake for Potential Representation: 716-853-3087

❖ Health Care Advocacy, Consumer, Elder Abuse Prevention, Kinship, and more!

Resources

- ❖ Erie County Senior Services/NY Connects: 716-858-8526
 - <https://www2.erie.gov/seniorservices/>
 - <https://www2.erie.gov/nyconnects/>
- ❖ Nursing Home Resident Rights Information
 - <https://nursinghome411.org/>
 - <https://elderjusticenyny.org/resources/long-term-care-resources/>
 - <https://theconsumervoice.org/home>
- ❖ WNY Independent Living Center
 - ❖ Open Doors Program: assists with the transition from nursing home back to home or residence of the person's choice.
 - ❖ Medicaid Application Assistance Program
 - <http://wnyil.org/Services>

Thank you!

Survey

<https://elderjusticenyc.org/participant-survey/>

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